

All Kind Quilting Inc. and North Side Trading Corp.¹ and Sportswear and Allied Workers Joint Board, International Ladies Garment Workers Union, AFL-CIO and Local 17-18, United Production Workers Union, AFL-CIO, Party to the Contracts, Case 29-CA-9045

3 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JENKINS AND HUNTER

On 23 September 1982 Administrative Law Judge Arthur A. Herman issued the attached Decision in this proceeding. Thereafter, the General Counsel, the Charging Party, and Respondents and the Party to the Contracts, jointly, filed exceptions and supporting briefs. Subsequently, Respondents and the Party to the Contracts, jointly, and the Charging Party filed reply briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions² and briefs,³ and has decided to affirm the rulings, findings,³ and conclusions⁴ of the Administrative Law

¹ Herein individually referred to as All Kind and North Side, respectively, and collectively referred to as Respondents.

² In view of our adoption of the Administrative Law Judge's 8(a)(2) conclusions, we find it unnecessary to pass upon the General Counsel's and the Charging Party's exceptions regarding the applicability of *Bruckner Nursing Home*, 262 NLRB 955 (1982); and *Midwest Piping Co.*, 63 NLRB 1060 (1945).

³ In concluding that Respondents violated Sec. 8(a)(2), the Administrative Law Judge at one point implied that Yankel Gottlieb signed the North Side collective-bargaining agreement. In fact, as he found earlier in his Decision, Leo Lowy signed that contract. We do not find that correction of this misstatement affects the Administrative Law Judge's conclusions.

The Administrative Law Judge's 8(a)(2) conclusions (which we adopt) were based, in part, upon his finding that Respondents prematurely extended recognition to Local 17-18. In so finding, he referred to the fact that All Kind did not employ a normal complement of employees until after recognition had been granted. We note that, given the Administrative Law Judge's conclusions about the relationship between All Kind and North Side (with which we agree), the relevant grouping of employees is that of both employers. It appears from the record that the normal complement of both employers is approximately 20 employees.

⁴ We agree with the Administrative Law Judge's conclusion that "All Kind has retained all of the right, title, and interest in the quilting business, that it alone has assumed the risks and derived the benefits from the quilting business, and that North Side is its *alter ego*." In adopting this conclusion, we note that, in cases of this nature, we have found that an *alter ego* relationship existed even though no evidence of actual common ownership was present. See, e.g., *American Pacific Concrete Pipe Co.*, 262 NLRB 1223, 1226 (1982).

We also agree with the Administrative Law Judge's alternative holding that All Kind and North Side constitute a single employer. Although it appears that he believed a unit encompassing all of Respondents' employees is appropriate, he did not make an explicit unit finding. We conclude, based upon his findings that the enterprises are interrelated, their labor relations centralized, and there has been an integration of employees performing work for both companies on a daily basis, that All Kind's employees and North Side's employees do not constitute distinct and sepa-

Judge and to adopt his recommended Order, as modified herein.⁵

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondents, All Kind Quilting Inc. and North Side Trading Corp., Brooklyn, New York, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(f):

"(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the following for paragraph 2(b):

"(b) Offer immediate and full reinstatement to the employees who were laid off on October 24, 1980, to their former jobs, or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered by reason of Respondents' refusal to recall them, in the manner set forth in the section of the Administrative Law Judge's Decision entitled 'The Remedy.'"

3. Substitute the attached notice for that of the Administrative Law Judge.

rate units and that therefore a unit encompassing all of Respondents' employees is the appropriate unit.

We find it unnecessary to pass upon the Administrative Law Judge's conclusion that All Kind and North Side constitute joint employers.

⁵ In his recommended Order, the Administrative Law Judge used the narrow cease-and-desist language. We have considered this case in light of the standards set forth in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), and we have concluded that the nature and extent of Respondents' violations of Sec. 8(a)(1), (2), and (3) of the Act clearly "demonstrates a general disregard for [its] employees' fundamental statutory rights." Accordingly, we shall modify the recommended Order by substituting the broad injunctive language "in any other manner."

We decline, however, to provide the extraordinary remedies requested by the Charging Party. We believe that the conventional remedies provided herein are adequate to dissipate the coercive effects of Respondents' unfair labor practices and to give the employees an understanding of their rights under the Act.

We shall correct an inadvertent error in the Administrative Law Judge's recommended Order. Finally, we shall conform the notice to the recommended Order and to the modifications herein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

In recognition of these rights, we hereby notify you that:

WE WILL NOT give effect to the collective-bargaining agreements entered into 11 May and 17 June 1981 with Local 17-18, United Production Workers Union, AFL-CIO, or to any extension, renewal, or modification thereof, unless and until Local 17-18 shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among our employees.

WE WILL NOT recognize Local 17-18 as the exclusive representative of our employees for the purposes of collective bargaining unless and until it has been selected by them in the manner prescribed above.

WE WILL NOT discriminate against any employee by refusing to recall him because he supported the Joint Board or any other labor organization.

WE WILL NOT solicit authorization cards from our employees on behalf of Local 17-18 or any other labor organization.

WE WILL NOT interrogate our employees regarding their union activities on behalf of the Joint Board or any other labor organization.

WE WILL NOT threaten our employees with reprisals if they assist the Joint Board or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by the National Labor Relations Act.

WE WILL withdraw and withhold any recognition we have granted to Local 17-18, unless and until it has been certified by the Board.

WE WILL offer immediate and full reinstatement to the employees who were laid off on 24 October 1980 to their former jobs, or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of pay suffered by reason of our refusal to recall them, with interest.

WE WILL refund to our employees any and all dues collected from them pursuant to the union-security provisions in the collective-bargaining agreements with Local 17-18 referred to above.

ALL KIND QUILTING INC. AND
NORTH SIDE TRADING CORP.

DECISION

STATEMENT OF THE CASE

ARTHUR A. HERMAN, Administrative Law Judge: This case was heard before me on December 14-15, 1981; on January 18-20, 1982; and on February 16, 1982, in Brooklyn, New York. Based on a charge filed on July 23, 1981, by Sportswear and Allied Workers Joint Board, International Ladies Garment Workers Union, AFL-CIO, herein called Joint Board or the Charging Party, which was later amended on August 21, 1981, a complaint issued on October 23, 1981, alleging, *inter alia*, that North Side Trading Corp., herein called North Side, is the successor and *alter ego* of All Kind Quilting Inc., herein called All Kind and collectively called Respondents.¹ In addition, the amended complaint raises issues of unlawful interrogation, coercion, and solicitation by Respondents, all in violation of Section 8(a)(1) of the Act; unlawful recognition of Local 17-18, United Production Workers Union, AFL-CIO, herein called Local 17-18, by Respondents in violation of Section 8(a)(2) of the Act; and unlawful refusal to recall laid-off employees in violation of Section 8(a)(3) of the Act. Respondents' answers deny the commission of any unfair labor practices.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Charging Party, and Respondents, I make the following:

¹ At the hearing, the General Counsel moved to amend the complaint in several respects, the most significant allegation being that as an alternative to North Side being the successor and *alter ego* of All Kind, the two Respondents are a joint or single employer. The motion was granted over Respondents' and the Party to the Contracts' objections. Subsequent to the close of hearing, the General Counsel prepared and submitted to me and to all parties an amended complaint complete with all amendments offered during the course of the hearing. Accordingly, I received into evidence the amended complaint as G.C. Exh. 37.

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, All Kind, a New York State corporation, has been located at 128 Wythe Avenue, Brooklyn, New York, where it has been engaged in the manufacture, sale, and distribution of quilting materials, and in the business of buying, warehousing, and selling piece goods. In the course of its business operations, All Kind sold quilting materials valued in excess of \$50,000 directly to customers located outside New York State.

At all times material herein, North Side, a New York State corporation, has been located at 66 North 9th Street, Brooklyn, New York, where it has been engaged in the manufacture, sale, and distribution of quilting materials. In the course of its business operations, since it commenced operations in May, 1981, North Side has sold quilting materials valued at a projected annual rate of in excess of \$50,000 to customers in New York State, which customers in turn shipped the goods to firms engaged in interstate commerce located outside New York State.

I find that All Kind and North Side, at all times material herein, have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The amended complaint alleges, all parties admit, and I find that the Joint Board, Local 17-18, and Local 413, Office and Professional Employees Union, AFL-CIO, herein called Local 413, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

For many years prior to October 1980, All Kind occupied a building located at the intersection of Wythe Avenue and North 9th Street, Brooklyn, New York. That part of the building which runs along Wythe Avenue is five-stories high and extends from the corner of North 9th Street halfway down the block toward North 8th Street. There is an entrance to this part of the building at 128 Wythe Avenue, with stairs to the second floor office. The other part of the building, which does not face on Wythe Avenue, is one-story high extending from North 9th Street to North 8th Street and is contiguous to the five-story structure; its address is 66 North 9th Street. There are loading dock areas on both ends of the one-story building. There is also a door on North 9th Street, near Wythe Avenue, which the employees use to come to work on the first floor of the five-story building. All Kind was engaged in the manufacture and sale of quilting materials, and as a jobber, in the purchase and sale of textiles. It is undisputed that Simon Gottlieb and Israel Friedman were, at that time and at present, the owners of All Kind.

Prior to October 24, 1980, All Kind employed approximately 22 employees: 9 quilting machine operators

(they also operate the mending machine); 7-8 floor boys; 1 examiner; 2 sewing machine operators; 1 winding machine operator; 1 trimming machine operator; and 1 driver. Approximately 30-34 quilting machines, 2 mending machines, and 1 trimming machine were located in the one-story building. There was also a storage area for bolts of woolens, dacron, and cheesecloth, materials used in the quilting operation. The first-story of the five-story building had two winding machines and one cutting machine, both of which were used for quilting and nonquilting purposes. Materials were also stored on that floor. The second floor had two sewing machines and one winding machine, storage shelves, All Kind's offices (occupied by three office employees—Biederman, the bookkeeper, Schachter, and Brandy), and an elevator to the upper floors. The third, fourth, and fifth floors were used to store materials, used for both quilting and nonquilting purposes. All five floors had bathrooms; there was no bathroom in the one-story building. The truck entrance on North 8th Street received woolens, dacron, and cheesecloth materials; the truck entrance on North 9th Street received nylon and taffeta material. There were telephones located in the one-story building and on the first floor of the five-story building, and in the offices on the second floor. A wall separated the five-story building from the one-story building; on this wall there was a wide door for employees to walk through; there was another regular width door but because of boxes stacked against it, it was unusable.

Materials used for making quiltings go through the following process: Materials are examined on the winding machine to check for defects and stains; those found to be in good condition are sent to the quilting machines to be combined and made into quiltings; the quiltings then go to the mending machine and then to the trimming machine; they are then packed and either stored in bins or sent out to customers. The materials found to have defects are sent to the sewing machines where they are cut and pieced together minus the defects; if the materials are stained, they are dyed a different color. The rehabilitated materials are then turned into quiltings. Five employees² of All Kind testified that Simon Gottlieb, assisted by his son, Jerome,³ was in charge of operations on the first floor, whereas Israel Friedman, assisted by his son, Shulem, oversaw the operations on the second floor and above.⁴ Cordero, who worked on the winding and trimming machines and as a floor boy, stated that both Gottliebs and both Friedmans assigned work to employees, and that all four granted time off. Cordero further testified that Ephraim Stern⁵ was a foreman, that Stern

² Walter Cordero, Miguel Diaz, Antonio Gutierrez, Ralph Conde, and Elena Iriarte.

³ The parties stipulated that Jerome Gottlieb, named in the complaint, and Yankel Gottlieb, referred to constantly in the transcript, are one and the same person.

⁴ While Respondents concede that at present Shulem is a supervisor within the meaning of the Act, for All Kind, and Yankel is a supervisor for North Side, they deny that either one was a supervisor of All Kind prior to October 24, 1980.

⁵ Stern is Simon Gottlieb's son-in-law.

hired Cordero, and that he too was in charge of the employees. Cordero testified that Yankel would check the quilting operators and floor boys, he would show them which materials to use, and he would correct them if they did something wrong. As for Shulem, Cordero stated that he would check the work of the sewing machine operators and make sure that the right materials were being brought down from the upper floors. Diaz, a quilting machine operator, testified that Shulem "do a lot of positions over there. He taking care of the truck. He like a boss. You know, he put in up there material. He put material in the machine, everywhere."⁶ Diaz further stated that Simon assigned work to employees, and that, when Diaz wanted time off, he asked Simon for permission. Gutierrez, a floor boy,⁷ referred to Shulem as "a boss" who gave orders to the employees to put materials in boxes or to take material from one floor to another. He testified that Yankel was the foreman of the quilting machine area and that he gave orders to the employees telling them what kind of material to use. Gutierrez referred to Simon Gottlieb as "boss number one" and called Shulem and Yankel "minor bosses." Conde, a quilting machine operator, was hired by Simon Gottlieb. According to Conde, Simon, Israel Friedman, Shulem, and Yankel were all "bosses." They all assigned work, and on one occasion, Shulem fired an employee with whom he had a fight. Iriarte, a sewing machine operator, testified that Shulem assigned work to her and to other operators, and that he gave orders to floor boys designating which materials he wanted brought to the machines.

The payroll records⁸ for All Kind show that through October 24, 1980, the Gottliebs, Friedmans, Stern, the office staff, and Schlufman (mechanic) were paid weekly salaries, while all other employees were paid hourly wages. In addition, the records also show that from the weekly payroll period ending October 31, 1980, when All Kind had no production and maintenance employees working, to the weekly payroll period ending May 1, 1981, when All Kind began hiring again, Yankel Gottlieb and Shulem Friedman continued to receive their weekly salaries on a regular basis.

On the basis of the above, i.e., the relationship of Yankel and Shulem to the owners of All Kind, the fact that both the owners and the employees viewed Yankel and Shulem as representatives of management, and that both Yankel and Shulem enjoyed a mode of payment different from that received by employees, the evidence that Shulem discharged an employee, and the fact that both responsibly directed employees in their work, leads me to conclude, and I find, that at all times material herein, both Yankel and Shulem were supervisors within the meaning of Section 2(11) of the Act.

Since about 1960, All Kind's production and maintenance employees had been represented for collective-bargaining purposes by Local 413. The most recent collec-

tive-bargaining agreement between All Kind and Local 413 expired on December 31, 1980. Murray Kaner, an organizer and business agent for the Joint Board, testified that Conde had contacted his union sometime in October 1980, because the employees no longer wished to be represented by Local 413. Conde was given authorization cards to hand out to the employees. Conde testified that on or about October 15, 1980, he distributed the cards to 14 employees inside the plant, all 14 signed and returned the cards to him.

On Friday, October 24, 1980, All Kind notified all of its employees that it was closing down its operation. Cordero testified that while he was working at the winding machine Shulem came by and said, "Do you want to change the union? Now, get out of here and don't ever come back here. We are going to close the factory." Then, Stern told Cordero, "Walter, take your check and don't ever come back to work here again because the factory is going to be closed." Diaz testified that Stern told him, "There will be no more work for now on, for the rest of the year." Gutierrez stated that Stern told him, "We have problems with the factory." According to Conde, Biederman told him "that there wasn't no more work for us."

On October 28, 1980, Conde filed a decertification petition with the Board in Case 29-RD-369 and on October 29, 1980, a representation petition was filed by the Charging Party, in Case 29-RC-5203. These petitions were consolidated for hearing, and on February 5, 1981, the Regional Director for Region 29 issued a decision in which he found "that the possibility of the Employer [All Kind] ceasing operations [was] purely speculative," and directed that an election be held. However, on February 9, 1981, All Kind wrote to the Regional Director and emphatically stated that it had closed its manufacturing operations and did not intend to reopen it. Based on that assertion, the Regional Director ordered the hearing reopened, took additional testimony, and on April 28, 1981, issued a Supplemental Decision and Order finding that although All Kind was continuing the business of buying, warehousing, and selling piece goods, the possibility of All Kind "continuing its manufacturing operations [was] purely speculative," and he, therefore, dismissed the petitions.

Within a few days of the laying off of the employees and the closing of the plant on October 24, 1980, the Charging Party rented a hall on the corner of North 8th Street and Wythe Avenue, diagonally across the street from the Wythe Avenue entrance to All Kind's premises, for the purpose of observing what was going on at the factory and for a place to have the employees congregate. The location was known as the People's Firehouse. Michael Weber, an organizer for the Joint Board, and active in the All Kind organizing campaign, testified that employees would meet almost every day at the Firehouse and would watch the factory for any signs of activity. Weber testified to having two conversations with Shulem in December 1980. The first one, in early December, took place on Wythe Avenue in front of the factory; Shulem approached Weber and they introduced themselves. When Shulem asked Weber what he was

⁶ Diaz did not testify through an interpreter, and so the above quote reflects his colloquial speech pattern.

⁷ Floor boys unload materials and boxes from trucks when there are deliveries to the plant; they wrap quilting materials in plastics for shipment; and, they store and remove materials from bins as needed.

⁸ G.C. Exh. 12.

doing there, Weber told him that he was protecting the interests of the employees who had been laid off; Shulem replied that All Kind was having a big problem with thievery and that is why the factory was closed. At this point, Israel Friedman joined the conversation and repeated the problem they were having with stealing. He also said that the Company was going into the textile business because of the theft problem. Then Shulem offered the thought that since they knew that this was costing the Joint Board a lot of money, maybe an arrangement could be worked out where the money could be split, but Weber rejected it. Then Israel Friedman commented that he could not understand why the Joint Board was there since he had not heard any complaints from the employees. Weber responded by saying that the employees would like better wages, and Israel said they were getting the same as everybody else in the area. The meeting then broke up. The second meeting took place on December 30, 1980, at the side door on North 8th Street. When Shulem asked why the employees had not found any work yet, Weber said they were waiting for All Kind to open up. Shulem responded that "we can stay closed for two, six or twelve weeks it doesn't matter we can wait you out." Whereupon Weber said that he could stay as long as it would take until they reopened the factory. Then Shulem spoke about the high cost of lawyers and NLRB proceedings and, according to Weber, offered to pay the money to Weber. Weber told him to work out an agreement with the Joint Board, and that ended the discussion.⁹

Miguel Diaz testified that one day in January 1981, while he sat in his parked car outside the Firehouse, Shulem approached, entered his car, and asked him, "Miguel, who in this union are inside here?" and "You know, this is a stupid thing what you are doing. Do you know how many years we have Manuel Paya, the president of Local 413?" Diaz replied, "Yes, I know. More than 20 years." Then Shulem said, "We're not going to let nobody—other people to come and ruin our business," and "You bring this union here, you don't talk to me, you don't talk to nobody." And then Shulem said, "There is still time to get together and talk with the boss." At that point, Joe Quiles, All Kind's truck driver, got in the car and Shulem got out, saying, "Think about it and let me know."

B. Significant Events Occurring During the 10(b) Period¹⁰

As stated above, subsequent to the issuance of his Decision and Direction of Election on February 5, 1981, the Regional Director for Region 29 issued an order on February 17, 1981, reopening the hearing, and based on additional testimony from Respondents, dismissed the petitions on April 28, 1981.

⁹ Inasmuch as Respondents chose not to call any witnesses in their defense, and are relying solely on their contention that the General Counsel and the Charging Party have failed to prove their case, I credit Weber's uncontroverted testimony, and that of the General Counsel's other witnesses, unless successfully refuted on cross-examination or otherwise indicated.

¹⁰ The charge herein was filed on July 23, 1981.

Between the issuance of the order reopening the hearing and the decision dismissing the petitions, Respondent All Kind held an auction of its quilting machinery on March 24, 1981. Kaner, an organizer for the Joint Board, testified that he had seen a newspaper ad advising of an auction of All Kind's equipment to be held on March 3, 1981. Kaner and Weber attended but no one else was present except for the Friedmans and Gottliebs, and Schwimmer, who introduced himself as the liquidation attorney. After a short wait, Schwimmer advised Kaner that the auction was being called off because the auctioneer was sick. Schwimmer took Kaner's name and address and said he would notify Kaner when the auction would be held again. Kaner further testified that though he was not notified by Schwimmer, he learned about the March 24 auction from reading an ad in the New York Times, and attended it with Weber. Schwimmer and the auctioneer were there but there were no tags on the machinery. At or about 9:30 a.m., 10 or 11 Hasidic men came on the premises, one behind the other. The auctioneer announced that there would be a bulk sale of 34 quilting machines, several sewing machines, a winding machine, and a baling machine; that the materials owned by All Kind were not up for auction; that the purchaser would have 7 days within which to remove the machinery from the premises. The auctioneer started the bidding at \$30,000, four or five people bid, and the sale was completed at \$90,000. Although the auctioneer had stated that a certified check for 25 percent of the purchase price was required immediately, Israel Friedman accepted a personal check from the buyer signed by a Leopold Lowy.

Lowy, called as a witness by the General Counsel, pursuant to Section 611(c) of the Federal Rules of Evidence, testified that he visited All Kind's premises a few days before the auction to inspect the machinery, but that he did not attend the auction; instead, he sent a representative with a check made payable to All Kind and signed by Lowy with the amount left blank, and the representative purchased the machinery for Lowy. Lowy further testified that he formed North Side Trading Corp. and that he is its sole stockholder and president.¹¹ Lowy stated that he had no prior experience in the quilting business, that he was also president of NAP Industries, a company engaged in the manufacture of plastic bags, but that he bought the machinery with the hope of putting his son into the business; when this did not work out, he hired Yankel Gottlieb to be the manager and to run the business at the same location that it was before. Lowy draws no salary or expenses from North Side. He only visits the premises about once a month. He is not familiar with the employees' functions, nor does he know the volume of business that North Side generates. Yankel has permission to sign Lowy's name to checks. Lowy does not know how North Side gets its customers nor can he recall any of their names; by his own admission, "I am not taking care of those things, everything is my manager take care . . . , he has experience, he take care of everything." Lowy was not involved in setting up

¹¹ The record does not reveal whether the incorporation of North Side occurred prior to or after the auction.

North Side's bank account nor is he familiar with the insurance coverage carried by North Side. Although Lowy is not related to either the Friedmans or the Gottliebs, he admits to being friends with them inasmuch as they attend the same synagogue on a weekly basis.

Jerome (Yankel) Gottlieb also was called as a Section 611(c) witness by the General Counsel. He testified that Lowy hired him in June 1981 to manage North Side's operation and that North Side was engaged in the business of contracting quilting.¹² Yankel stated that while he was still on All Kind's payroll in May 1981 he hired employees for Lowy and handled North Side's first order. The record shows that that first order was for All Kind. The record further shows that for the period from May to September 1981, North Side had only three customers: All Kind, Excellent Quilting, and Mazel Quilting.¹³ In response to the General Counsel's questions, Yankel admitted that when he received materials from Excellent and Mazel he signed a consignment record for those two customers showing just how much material he had been given to work on; however, in filling orders for All Kind no such record was maintained, and the materials were merely handed over from All Kind for North Side to work on. The record shows that New York Telephone installed a phone for North Side on July 7, 1981.¹⁴ Yankel admits that prior to that date, North Side used All Kind's phone for business purposes. North Side maintained no office of its own; All Kind's clerical staff performed North Side's office functions. The record also shows that a workmen's compensation policy covering employees engaged in quilt manufacturing was taken out by All Kind, effective August 19, 1981.¹⁵ Also, three fire insurance policies which commenced in May and July 1981 were obtained by All Kind covering the entire premises,¹⁶ and two fire insurance policies were obtained by North Side in November and December 1981, the earlier one covering the building on Wythe Avenue.¹⁷ The legal, accounting, and insurance services performed for All Kind and North Side were performed by the same professional firm. An additional fact elicited from Yankel was that North Side does not pay for the use of electricity. A lease from All Kind to North Side for the use of the premises executed on May 18, 1981, was introduced into evidence¹⁸ providing for an annual rental of \$12,000, payable \$1,000 per month. The first rent check from North Side to All Kind was dated August 20, 1981, for \$3,000 to cover rent for June through August 1981.¹⁹

¹² As a contractor, North Side receives materials from its customers, combines the materials to make quiltings, and then returns the quiltings to its customers. North Side does not purchase any materials used for quiltings.

¹³ See accounts receivable ledger sheets—G.C. Exh. 30. It is noted, from the figures in that exhibit, that North Side's total sales for the period shown approximated \$45,000, of which approximately \$30,000 worth of quilting was sold to All Kind. In addition, it is undisputed that Mazel Quilting was formerly a customer of All Kind.

¹⁴ G.C. Exh. 31.

¹⁵ G.C. Exh. 28(a). It is noted that Respondents contend that All Kind terminated its manufacturing operation on October 24, 1980.

¹⁶ G.C. Exhs. 28(b)–(d).

¹⁷ G.C. Exhs. 29(a)–(b).

¹⁸ G.C. Exh. 27.

¹⁹ G.C. Exh. 35.

The lease provides for no security to be deposited with All Kind, and while the printed form lease in paragraph 12 provides for a rider to be attached spelling out the electric current charges to be assessed against North Side, no such rider is attached to the lease.²⁰

Other documents executed on May 18, 1981, and introduced into evidence included (1) a bill of sale²¹ from All Kind to North Side, signed by Israel Friedman, for the machinery purchased at the auction; (2) a security agreement²² setting forth the method of payment that North Side, the debtor, will have to meet in its obligation to All Kind, the secured party. This agreement contains a rider requiring the debtor to deposit with the secured party all of the stock of North Side as collateral, and also requires All Kind to provide a person or persons to assist North Side in the running of the debtor's business. This agreement was executed by Israel Friedman of All Kind and bears the name of Leo Lowy as having executed it for North Side;²³ and (3) an assignment of title in the machinery from NAP Industries to North Side, with North Side assuming all of NAP's obligations *in re* the payment of the balance due on the purchase price for the machinery. This document was executed by Lowy on behalf of both the assignor and assignee.²⁴

Payroll records were placed in evidence by the General Counsel to show that for the period from October 24, 1980, to May 1, 1981, only the names of family members of the Gottliebs and Friedmans and the clerical staff appeared on All Kind's payroll;²⁵ that starting with the May 8, 1981, payroll, however, All Kind began hiring factory personnel,²⁶ so that by September–October 1981, All Kind had six or seven hourly paid factory employees on its payroll, some of whom had worked previously for All Kind and some who had not. North Side's payroll records indicate that Yankel Gottlieb was paid for the first time for the week ending June 12, 1981; that Gutierrez started the following week and has continued at least through the balance of 1981;²⁷ that three employees

²⁰ In fact, an examination of the utility bills paid by All Kind (G.C. Exh. 38) reveals the fact that from June 5 (the approximate date that North Side went into operation) to November 19, 1981, the amount paid by All Kind for the entire premises exceeded \$4,000.

²¹ G.C. Exh. 25.

²² G.C. Exh. 26.

²³ I have viewed Lowy's signature as it appears on the check used to purchase the machinery at the auction, and Yankel's admitted signing of Lowy's name as it appears on the rent check referred to *supra*, and I am of the opinion that Yankel signed Lowy's name to the security agreement as well as to the lease.

²⁴ G.C. Exh. 36.

²⁵ G.C. Exh. 12.

²⁶ The May 8 payroll lists two hourly wage employees; the May 15 payroll lists three such employees; and the May 22 payroll lists four such employees. Starting with the June 26 payroll the number of employees fluctuated between six and seven. It is noted that the dismissal of the representation petition is dated Tuesday, April 28, 1981, and the payroll record for the week ending May 1, 1981, lists two hourly wage employees, each having worked 13-3/4 hours.

²⁷ Gutierrez testified that he went to the factory on a Friday in June 1981, in response to a telephone call made to his sister-in-law by Shulem Friedman, and was offered a job by Shulem, but that he should not say anything to anybody. Although he worked as a floor boy for All Kind before the layoff, his job at North Side, in addition to unloading boxes and putting them where Simon, Shulem, and Israel Friedman tell him, is to work the winding and sewing machines.

were hired sometime during the week ending May 29, 1981;²⁸ that Holario Ruiz began working during the following week; and that thereafter about 10 additional employees were hired from June 19 onward. An employee, Rachel Myski, appears on North Side's payroll as having worked from June 12 to August 21, 1981; then, she appears on All Kind's payroll from August 28 to September 18, 1981. Also, an employee named Polidubinsky worked for All Kind for the week ending June 5, 1981, and then is transferred to North Side's payroll and continues working through August 28, 1981.

It is Cordero's uncontradicted testimony that after he returned to work for All Kind at the end of June 1981, he observed no structural changes on its premises, and all the machinery and materials were located as before; he was aware of the fact that Gary Fields, the truckdriver, was working for both All Kind and North Side despite the fact that he was being paid by All Kind;²⁹ and that Romulus, a floorperson paid by All Kind, carried materials and merchandise for both companies. Cordero stated that he recognized Gutierrez and some other employees who had been there before the layoff on October 24, 1980;³⁰ that the Friedmans are in charge of the work on the second floor, just as it was before the layoff; that Simon Gottlieb is still putting the rolls on the quilting machines; that Yankel Gottlieb works at and checks the quilting machines; and, that all four make assignments of work to the employees.

On May 11, 1981, All Kind executed a contract, signed by Simon Gottlieb, recognizing Local 17-18 as the collective-bargaining representative of its production and maintenance employees. On June 17, 1981, North Side recognized Local 17-18 as the collective-bargaining representative for its production and maintenance employees and executed a contract to that effect. Leo Lowy signed the contract for North Side and David Ganz signed as Local 17-18's president.³¹ In questioning Yankel Gottlieb, the General Counsel sought an affirmative response to the question, "Is it not a fact that after you hired the employees to work in North Side Trading Corporation that you personally called David Ganz, President of Local 17-18 and told him to come down and organize the employees?" When Yankel replied in the negative, the General Counsel quoted from, and introduced into evidence, paragraph 18 of Yankel's affidavit which reads as follows: "When I began hiring the employees for North Side Trading in May 1981, I called Mr. Ganz to come and sign up the employees for the union. Ganz came to the factory and signed up the employees. I usually waited until I had hired two (2) or three (3) before I called the union. All of my employees are in Local 17-18 and I deduct union dues from their wages." After the introduction into evidence of the above-quoted paragraph and repeated attempts by the General Counsel to get Yankel to respond affirmatively, Yankel, while no longer denying what was in the affida-

vit, stated, "I don't remember no days, the only thing I know it was after the contract was signed." In a further exchange, the General Counsel asked, "Mr. Gottlieb, isn't it a fact that after you had this conversation with Mr. Ganz that Mr. Ganz did come down and sign up the employees of North Side Trading for Local 17-18?" And Yankel replied, "It was after the contract was signed."³²

Cordero testified that he was called back to work at All Kind by Simon Gottlieb; that he reported for work on Monday, June 29, 1981; and, that he was assigned to operate the winding machine on the first floor of the five-story building. On that day, Simon Gottlieb told Cordero to go to the office and sign a union card.³³ After signing a card for Local 17-18, Cordero returned to his machine and Simon told him that there were now two companies, but that he was working for All Kind. According to Cordero, all packages coming into the factory and going out of the factory bear the All Kind label, and he has never seen a North Side label. Since his return to All Kind, Cordero works on the winding machine, unloads trucks, and fixes shelves on the second floor. On one occasion, when Gutierrez was absent for 2 days, Cordero replaced him on the trimming machine pursuant to Simon Gottlieb's orders.³⁴ On cross-examination, Cordero stated that while most of his orders came from Shulem, on about 10 occasions since his return, Yankel has told him what to do, and that sometimes, Shulem uses the trimming machine and puts rolls that come from the quilting machines on the trimming machine.³⁵ When shown a tag by the General Counsel that is put on the rolls of material that come off the trimming machine, Cordero testified that both he and Gutierrez placed them on the merchandise of both companies.

Gutierrez testified that when he came to work for North Side in June 1981, Simon Gottlieb assigned him work on the trimming machine and the sewing machine, and that Shulem Friedman told him to help the floor boys load and unload boxes from the trucks. He stated that after the materials are quilted, he takes the merchandise to the winding machine, then to the trimmer; and then, he tags the merchandise for shipment or for putting it on the shelves. Gutierrez testified that the two Correa brothers, employees of All Kind after June 1981, moved materials from the quilting machines to the mending machines. One week after Gutierrez went to work for North Side, a second timeclock was installed on the premises, and Yankel instructed Gutierrez to use the new timeclock from then on. Gutierrez stated that one day while working he was summoned to the office and told by Biederman to sign a union card for Local 17-18,

²⁸ I deduce from the evidence presented that Yankel did contact Ganz and invite him to the factory to sign up North Side's employees, that Ganz did do so, but that by Yankel's own admission, Ganz did not sign up the employees until after North Side had extended recognition to Local 17-18 and had executed the contract on June 17, 1981.

²⁹ Cordero stated that, when he got to the office, Biederman gave him the card and asked him to sign.

³⁰ As stated above, Gutierrez was employed by North Side.

³¹ Cordero further testified, on cross-examination, when he was confronted with specific names listed on All Kind's payroll, that those named employees worked for both All Kind and North Side.

²⁸ Victor Tico, Jose Carollo, and Walter Molina.

²⁹ Cordero stated that North Side had no trucks of its own.

³⁰ Diaz, Conde, and Iriarte were not rehired.

³¹ David Ganz was identified as being present during the course of the hearing, but was not called to testify. Both contracts contain valid union-security and checkoff clauses.

which he did; however, he does not remember the date and the card (G.C. Exh. 19) is not dated.

Kaner, the Joint Board organizer, testified that in late June or early July 1981, he and another organizer, Lewis Bertot, visited the plant for the purpose of talking to Israel Friedman. They went to the office on Wythe Avenue and spoke to an unidentified woman in the office. In response to questions by Kaner, the woman advised him that Friedman was on vacation and that North Side is just another name used by All Kind. Bertot corroborated Kaner's testimony and quoted the woman as saying, "[North Side] is a part of All Kind." On cross-examination, Kaner related a conversation he had with Friedman on June 5, 1981, in the factory. In response to Kaner's question as to when Friedman was going to rehire his quilting employees, Friedman told him that he was happy to be out of the quilting business, and that all he was doing was buying and selling material.

Cordero testified that on Friday, August 14, 1981, he had a conversation outside the factory with Conde and Diaz. The following Monday, August 17, 1981, when Cordero came to work, Shulem asked him what he, Conde, and Diaz spoke about. Cordero's response was evasive and Shulem said, "You are lying" and told Cordero that whatever Conde or Diaz said, Cordero should relate to him. About half an hour later Yankel inquired of Cordero about the same meeting but Cordero gave him a negative response. Still later that same day Simon Gottlieb asked Cordero what he spoke about to Conde and Diaz; when Cordero responded, "Nothing," Simon told him, "You are not supposed to give any information about the factory to anybody. Watch out."

Iriarte, a former sewing machine operator, testified that on May 15, 1981, she received a mailgram requesting that she call All Kind immediately. She called and spoke to Shulem. Shulem asked her if she wanted to work and she responded affirmatively. Shulem also asked Iriarte if she had spoken to anyone from the Union and she responded negatively. Shulem then asked her to call back, which she did on several occasions; she reached him on one of the calls but he told her again to call back. From then on whenever she called, she spoke only to a secretary and was not able to contact Shulem. She has not been called back to work.

Analysis and Conclusions

A. The Successor/Alter Ego, Single and Joint Employer Question

The complaint alleges, and the General Counsel and the Charging Party argue, that the conduct engaged in by All Kind on October 24, 1980; i.e., the layoff of its employees and the closing of its quilting operation was an attempt to avoid a possible future bargaining relationship with the Joint Board. I concur. The uncontroverted evidence established that just 1 week before the closing of the factory employee Conde handed out union authorization cards for the Joint Board to many employees inside the plant, all of which were signed and returned to him. In addition, employee Cordero testified that on the day of the closing he was questioned by Shulem Friedman regarding his desire to have Local 413 replaced by

the Joint Board. In the absence of any evidence to the contrary, this testimony leaves no room for doubt but that All Kind had knowledge of the Joint Board's presence and expressed its animus thereto. As stated by Administrative Law Judge Phil W. Saunders in *Tom's Ford, Inc.*, 233 NLRB 23, 27 (1977), "... in a small facility such as Respondent's, where the entire unit consists of approximately 25 employees, a reasonable inference may be drawn that Respondent would be aware of a union attempt to organize its employees." I draw that inference and I find that All Kind closed its quilting operation to avoid a potential future bargaining relationship with the Joint Board.

In addition, I credit Weber's testimony regarding the two conversations he had in December 1980 with Shulem and Israel Friedman, and also Diaz' testimony regarding his meeting with Shulem in Diaz' car in January 1981, both of which I find to be a continuation of All Kind's animus towards the Joint Board.

Although the events just depicted are time-barred pursuant to Section 10(b) of the Act, so as to prevent them from constituting an unfair labor practice, those matters are vital to the issues in this case, and I shall use them to shed light on the true character of events which occurred during the 10(b) period.³⁶ It is to those events that I next turn my attention.

As stated above, a bulk sale auction of All Kind's quilting machinery took place on March 24, 1981, and Leopold Lowy, through a representative, became the purchaser. Although Respondent contends that the auction was conducted at arm's length, I have my doubts considering the fact that Lowy failed to meet two of the conditions set by the auctioneer, namely his failure to submit a certified check for 25 percent of the purchase and his failure to remove the machinery from the premises within 7 days of the auction;³⁷ yet, All Kind waived the first condition and appears to have waived the second. However, be that as it may, the events which transpired thereafter have more of a bearing on the outcome of this proceeding.

On April 28, 1981, the Regional Director dismissed the representation petitions, and immediately following that dismissal, perhaps even the next day, All Kind began hiring employees to perform its jobbing operation of buying and selling rolls of materials. In May 1981, while Yankel Gottlieb was still on the payroll of All Kind and remained so until June 12, Lowy hired him to manage North Side, which was engaged in the quilting operation. The General Counsel and the Charging Party contend that these two operations, viewed in the context of what transpired in October 1980, and in the mode in which they have been set up and operated, establish the fact that North Side is the successor to and *alter ego* of All Kind, or in the alternative, All Kind and North Side are either a single or joint employer.

As the Board stated in *Denzil S. Alkire*, 259 NLRB 1323 (1982):

³⁶ *Machinists Local 1424 v. NLRB*, 362 U.S. 411 (1960).

³⁷ As a matter of fact, the machinery has not been removed to this day and is being used on the premises.

The legal principles to be applied in determining whether two factually separate employers are in fact *alter egos* are well settled. Although each case must turn on its own facts, we generally have found *alter ego* status where the two enterprises have "substantially identical" management, business purpose, operation, equipment, customers, and supervision, as well as ownership.

Citing *Crawford Door Sales Co.*, 226 NLRB 1144 (1976), and other cases. As in the *Alkire* case, there is no room for disagreement on the record in the instant case regarding the substantially identical business purpose,³⁸ operation, equipment, and customers of All Kind and North Side.³⁹ Left for consideration and discussion, therefore, are the remaining three factors, management, supervision, and ownership of All Kind and North Side.

As stated above, the management and supervision of All Kind rested in the hands of the Gottliebs and Friedmans, until Yankel Gottlieb moved over to manage the affairs of North Side. And, since North Side's inception, the uncontroverted testimony of Cordero and Gutierrez establishes that there has been an integration of employees performing work for both All Kind and North Side on a daily basis, still under the supervision of the Gottliebs and Friedmans. By Lowy's own admission, he has had no experience with the quilting business; he only visits the factory about once a month; he draws no salary or other moneys; he knows nothing of the employees' functions; he does not know the volume of business generated by North Side; he permits Yankel to sign his (Lowy's) name to checks; he is unaware of where North Side has its bank account; and he relies completely upon Yankel to run the business properly. In addition, the economic realities of the relationship demonstrate quite clearly that despite the fact that Lowy is the record owner of North Side, for all intents and purposes North Side is the *alter ego* of All Kind. In this regard, it should be noted as stated above, that no bookkeeping records were kept of materials given by All Kind to North Side to be converted into quiltings, as was done with materials received by North Side from Mazel Quilting or Excellent Quilting; that North Side used All Kind's office facilities and clericals;⁴⁰ that All Kind carried workmen's compensation insurance to cover employees engaged in quilt manufacturing; that both carried fire insurance policies covering each other's premises; that, for a time, North Side used All Kind's telephone; that the electric bill, paid solely by All Kind, is practically equivalent to the rent paid by North Side; that North Side has not been required to pay the balance on the initial purchase price for the machinery purchased at the auction, despite the fact that a security agreement was executed setting forth the mode of payment; that no rent was paid

by North Side until after the first 3 months of occupancy; and, that North Side incurs no expenses for deliveries inasmuch as it uses All Kind's trucks.

Therefore, despite the fact that common "paper" ownership is lacking, I find that All Kind has retained all of the rights, title, and interest in the quilting business, that it alone has assumed the risks and derived the benefits from the quilting business, and that North Side is its *alter ego*. I conclude, therefore, that North Side is "merely the disguised continuance of the old employer,"⁴¹ in the quilting manufacturing business.

In the alternative, the General Counsel argues that Respondents together constitute a joint or single employer. Having already found that North Side is the *alter ego* of All Kind, it is obvious that the two constitute joint employers within the meaning of the Act. However, in the event that the Board and/or the courts were to adhere to an opposing view, I aim to articulate further in finding All Kind and North Side to be both joint and single employers.

As originally stated in *Sakrete of Northern California*, 137 NLRB 1220 (1962), the Board looks to four principal factors in determining whether two separate employers will be treated as a joint employer. These factors are: (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. Later Board cases have noted that while no individual factor has been held to be controlling, emphasis is placed on the first three factors, particularly centralized control of labor relations.⁴²

In the instant case, the record clearly indicates that All Kind and North Side are interrelated enterprises. They share a common situs, both the Gottliebs and the Friedmans exercise control over the employees of both operations, and All Kind's materials are cut and sewn by North Side into quilted materials. Centralized control of labor relations was evidenced by the fact that Biederman, the bookkeeper, handed authorization cards to employees of both companies, and had them sign for the same union, Local 17-18, pursuant to instructions from Simon Gottlieb. Also, Shulem Friedman, an admitted supervisor for All Kind in June 1981, hired Gutierrez to work for North Side. While common ownership is another factor to be considered, I do not give this factor much weight when I am of the opinion that no arm's-length relationship existed between the companies either at the auction held on March 24, 1981, or at subsequent dealings involving the lease, security agreement, insurance policies, and electric company payments.⁴³ Under the circumstances, I find Respondents to be both single and joint employers, and therefore jointly and severally liable for the violations of the Act discussed herein.

³⁸ Prior to October 24, 1980, All Kind was engaged in both jobbing materials and manufacturing quiltings; currently, All Kind is jobbing materials and North Side is manufacturing quiltings.

³⁹ The operation currently is identical with that which existed prior to October 24, 1980. The equipment is the same; and, not only is North Side selling to at least one of All Kind's former customers, namely, Mazel Quilting, but All Kind itself is North Side's biggest customer.

⁴⁰ I credit Kaner who testified that when he visited the office, he was told that North Side "is a part of All Kind."

⁴¹ *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942).

⁴² *Stoll Industries*, 223 NLRB 51, 53-54 (1976).

⁴³ It should be noted that North Side's quilting operation, with its use of most of the machinery in the plant, constitutes perhaps 90 percent of the electric bill; and yet, All Kind pays the bill.

B. The 8(a)(1), (2), and (3) Allegations

Having found North Side to be the *alter ego* of All Kind, and/or joint or single employer, it is well established that North Side has the same obligation to employees as All Kind. Thus, regardless of whether All Kind's layoff of its employees in October 1980, violated the Act,⁴⁴ it is plain that North Side violated Section 8(a)(3) of the Act by not offering employment to the laid-off employees when it resumed operations in May 1981. This finding is based on All Kind's antiunion attitude toward the Joint Board since October 1980. To reiterate, All Kind closed down the quilting operation and laid off its employees to avoid possible future negotiations with the Joint Board; All Kind attempted to "do business" with union organizer Weber to discourage further Joint Board action against All Kind; All Kind attempted to discourage its employees from supporting the Joint Board;⁴⁵ All Kind engaged in a doubtful arm's-length auction in March 1981, seeking to "dispose" of its machinery; North Side, its *alter ego* was created; and, hiring of employees other than All Kind's former employees occurred commencing in May 1981. No attempt was made to contact the former employees, fourteen of whom signed cards for the Joint Board, except for Gutierrez, and Cordero was hired when he appeared one day at the plant.⁴⁶ When employees are not reinstated because of their activities on behalf of a union, an employer, such as Respondents herein, violates Section 8(a)(3) of the Act.⁴⁷

The General Counsel and the Charging Party further contend that the All Kind/North Side recognition of Local 17-18 constituted a violation of Section 8(a)(2) of the Act. I concur for three reasons. I find (1) that Respondents unlawfully assisted Local 17-18 by contacting its president, Ganz, and inviting him to the plant for the purpose of obtaining signed authorization cards from the employees; (2) that Respondents prematurely extended recognition to Local 17-18 by signing collective-bargaining agreements with Local 17-18 prior to hiring the majority of their work force; and (3) that Respondents extended recognition to Local 17-18 at a time when it had not signed up an uncoerced majority of Respondents' employees. The record discloses, as quoted above, that Yankel Gottlieb contacted Ganz and invited him to come and sign up the employees for Local 17-18. Quoting from Yankel's affidavit which was introduced into evidence as General Counsel's Exhibit 33, "when I began hiring the employees for North Side Trading in May 1981, I called Mr. Ganz to come and sign up the employees for the union." In addition, it is the undenied testimony of both Cordero and Gutierrez, that on the very first day that they were rehired they were told to report to the office where Biederman, the bookkeeper, had

them sign authorization cards for Local 17-18.⁴⁸ Such actions by Respondents, with a background of anti-Joint Board activity, is sufficient to warrant a determination of assistance to a labor organization in violation of Section 8(a)(2) of the Act. Moreover, the record discloses that at the time recognition was granted by All Kind to Local 17-18, All Kind employed, at the most, only three employees. In *Hayes Coal Co.*, 197 NLRB 1162 (1972), the Board stated at 1163:

The correct test is whether, at the time of recognition, the jobs or job classifications designated for the operation involved are filled or substantially filled and the operation is in normal or substantially normal production.

In applying this test to the instant case, I have decided that a violation exists. A review of All Kind's payroll reveals that the normal complement of employees (six or seven) was not achieved until the end of June 1981; thus, when recognition was granted on May 11 All Kind employed less than a majority of its normal complement, and they violated the Act. And further, when Yankel Gottlieb admitted that he invited Ganz to come down and sign up the employees for North Side only *after* he had signed the collective-bargaining agreement, such an act of recognition had to have occurred therefore before Local 17-18 had signed up an uncoerced majority of Respondents' employees. All in all, I find that Respondents have violated Section 8(a)(2) of the Act by executing contracts with Local 17-18, and inasmuch as said agreements contain viable union-security clauses which have been applied to the employees, an additional 8(a)(3) violation exists.⁴⁹

And, finally, the complaint alleges independent violations of Section 8(a)(1) of the Act. In the absence of any evidence to the contrary, I credit the testimony of Iriarte regarding Shulem Friedman interrogating her in May 1981 as to whether she had spoken to the Union (Joint Board) after receiving Respondents' telegram, and the testimony of Cordero regarding the interrogation he was subjected to by Shulem Friedman, Yankel Gottlieb, and Simon Gottlieb in August 1981 when he conversed with Diaz and Conde, known Joint Board supporters. I also credit Cordero when he related the threat he received from Simon Gottlieb for talking to Diaz and Conde. Inasmuch as it has been admitted that Shulem Friedman and Yankel Gottlieb were supervisors of Respondents since May 1981, and Simon Gottlieb is a principal of All Kind, I find that their above-described conduct constitutes violations by Respondents of Section 8(a)(1) of the Act in that such conduct interfered with the Section 7 rights of employees.

⁴⁴ That layoff occurred outside the 10(b) period.

⁴⁵ See Diaz' testimony *re* Shulem's conversation with him in January 1981.

⁴⁶ Although Iriarte was contacted and expressed her desire to work, she was not rehired.

⁴⁷ *Whitehall Packing Co.*, 257 NLRB 193 (1981); *Rushion & Mercier Woodworking Co.*, 203 NLRB 123 (1973).

⁴⁸ Respondents deny that Biederman is an agent of theirs. However, in view of the fact that Cordero and Gutierrez were sent to the office by Gottlieb for the express purpose of signing cards for Local 17-18, and Biederman was the conduit used to accomplish the act, I find Biederman to be Respondents' agent, acting on their behalf and for their benefit.

⁴⁹ In view of the Board's recent decision in *Bruckner Nursing Home*, 262 NLRB 955 (1982), I have disregarded the General Counsel's and the Charging Party's arguments in their briefs, concerning the effect of *Midwest Piping Supply Co.*, 63 NLRB 1060 (1945), on the instant case.

CONCLUSIONS OF LAW

1. All Kind Quilting Inc., and its *alter ego* North Side Trading Corp. constitute a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Sportswear and Allied Workers Joint Board, International Ladies Garment Workers Union, AFL-CIO, and Local 17-18, United Production Workers Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By recognizing and entering into collective-bargaining agreements with Local 17-18, containing union-security provisions, Respondents engaged in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act.

4. By refusing to recall employees who had been laid off on October 24, 1980, by Respondent All Kind, Respondents engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. By soliciting authorization cards from their employees on behalf of Local 17-18, Respondents engaged in unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

6. By interrogating and threatening employees regarding their union activities on behalf of the Joint Board, Respondents engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

THE REMEDY

It having been found that Respondents have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondents unlawfully assisted Local 17-18 by recognizing and entering into contracts with that Union, I shall recommend that they cease and desist from such conduct and from giving effect to the contracts which have been executed.

Having found that Respondents have given effect to the provisions of the union-security clause to their employees, I shall recommend that Respondents refund any and all dues collected from their employees pursuant thereto, and cease giving effect to said clause.

Having found that Respondents discriminatorily refused to recall certain employees laid off on October 24, 1980, I shall recommend that Respondents recall them with backpay computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977).

Having found that Respondents have engaged in unlawful solicitation, interrogation, and threats, I shall recommend that they cease and desist from violating the Act in this manner.

I shall also recommend that Respondents post appropriate notices.⁵⁰

⁵⁰ In addition to requesting the ordinary remedies as set forth above, the Charging Party, in its brief, seeks extraordinary remedies as ordered by the Board in *J. P. Stevens & Co.*, 240 NLRB 33 (1979), and *United Dairy Farmers Cooperative*, 242 NLRB 1026 (1979). Inasmuch as the

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁵¹

The Respondents, All Kind Quilting Inc. and its *alter ego* North Side Trading Corp., Brooklyn, New York, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing or contracting with Local 17-18, United Production Workers Union, AFL-CIO, as the exclusive representative of their employees for the purposes of collective bargaining, and giving effect to the union-security provisions contained therein, unless and until said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among Respondents' employees.

(b) Discriminating against their employees by refusing to recall them because they supported the Joint Board.

(c) Soliciting authorization cards from their employees on behalf of Local 17-18.

(d) Interrogating employees regarding their union activities.

(e) Threatening employees with reprisals if they assisted the Joint Board.

(f) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act:

(a) Withdraw and withhold any recognition they have granted to Local 17-18, unless and until Local 17-18 has been certified by the National Labor Relations Board.

(b) Offer immediate and full reinstatement to the employees who were laid off on October 24, 1980, to their former jobs, or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered by reason of Respondents' refusal to recall, in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Refund to their employees any and all dues collected from their employees pursuant to the union-security provisions in the collective-bargaining agreements with Local 17-18.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other

record fails to show a pattern of unlawful conduct evidencing a rejection of the principles of collective bargaining going beyond the confines of the instant proceeding, I reject the Charging Party's request. The record shows that All Kind, prior to 1980, had a history of collective bargaining with Local 413, and no record of recidivism before the Board.

⁵¹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(e) Post at its Brooklyn, New York, place of business copies of the attached notice marked "Appendix."⁵² Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondents' authorized representative, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in

conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁵² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."